No. 10507

United States

Circuit Court of Appeals

For the Ninth Circuit.

WARREN H. PILLSBURY, as Deputy Commissioner for the 13th Compensation District under the Longshoremen's and Harbor Workers Compensation Act,

Appellant,

vs.

LIBERTY MUTUAL INSURANCE COMPANY, a Mutual Insurance Company, and CONTRACTORS PACIFIC NAVAL AIR BASES, an Association,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

FILED

SEP 24 1943

PAUL P. O'BRIEN, CLERK

Rotary Colorprint, 590 Folsom St., San Francisco

No. 10507

United States
Circuit Court of Appeals
For the Ninth Circuit.

WARREN H. PILLSBURY, as Deputy Commissioner for the 13th Compensation District under the Longshoremen's and Harbor Workers Compensation Act,

Appellant,

vs.

LIBERTY MUTUAL INSURANCE COMPANY, a Mutual Insurance Company, and CONTRACTORS PACIFIC NAVAL AIR BASES, an Association,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 590 Folsom St., San Francisco

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Appeal:

- Certificate of Clerk to Transcript of Record on 71
- Counter Designation of Apostles on (DC) 70
- Designation of Apostles on..... 68
- Order Allowing 64
- Petition for 63
- Statement of Points on Appeal and Designation of Apostles on (CCA) 73

Assignment of Errors..... 66

Authorities in Support of Exceptions, Memorandum of 23
- Supplemental 28

Bill of Complaint for Mandatory Injunction... 2

Certificate of Clerk to Transcript of Record on Appeal 71

Citation and Admission of Service..... 65

Claim for Compensation, Employee's..... 54

Compensation Order and Award of Compensation 33

Index Page

Contract of Employment between Contractors Pacific Naval Air Bases and Charles F. Keil, Jr. 38

Counter Designation of Apostles on Appeal... 70

Decree, Order and 31

Designation of Apostles on Appeal (DC)..... 68

Designation of Apostles on Appeal, Statement of Points and (CCA)..... 73

Employee's Claim for Compensation..... 54

Exceptions of Respondent Warren H. Pillsbury to Libel in Personam to Enjoin Compensation Order 22

Findings of Fact and Conclusions of Law..... 57

Memorandum of Authorities in Support of Exceptions 23
Supplemental 28

Memorandum of Points and Authorities in Support of Bill of Complaint for Mandatory Injunction 13

Memorandum of Points and Authorities on Submission of Cause Following Libel for Mandatory Injunction, Opening..... 24

Names and Addresses of Attorneys of Record.. 1

Opening Memorandum of Points and Authorities on Submission of Cause Following Libel for Mandatory Injunction 24

Index Page

Order Allowing Appeal..... 64

Order and Decree 31

Order Setting Aside Award and for Issuance of Injunction 30

Petition for Appeal 63

Points and Authorities in Support of Bill of Complaint for Mandatory Injunction, Memorandum of 13

Statement of Points on Appeal and Designation of Apostles on Appeal (CCA)..... 73

Supplemental Memorandum of Points and Authorities in Support of Exceptions to Libel 28

Telegram, dated Aug. 6, 1942, from Deputy Commissioner Schmitz to Commission..... 53

Telegram, dated Aug. 7, 1942, from Commission to Respondent Pillsbury 53

Transcript of Testimony at Hearing before Deputy Commissioner Warren H. Pillsbury 43

NAMES AND ADDRESSES OF ATTORNEYS

FRANK J. HENNESSY,

United States Attorney,
Postoffice Bldg., San Francisco
Attorney for Respondents-Appellants

THEODORE HALE

26 O'Farrell St., San Francisco

CHARLES B. MORRIS

220 Bush St., San Francisco

CARROLL B. CRAWFORD

111 Sutter St., San Francisco
Attorneys for Libelants-Appellees

In the United States District Court for the Northern District of California, Southern Division

No. 23725S.

LIBERTY MUTUAL INSURANCE COMPANY, a mutual insurance company, and CONTRACTORS PACIFIC NAVAL AIR BASES, an association,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th District, and Charles F. Keil, Jr.,

Respondents.

BILL OF COMPLAINT FOR MANDATORY INJUNCTION

Come now the libelants above named and for bill of complaint against the respondents allege:

I.

That the libelant Liberty Mutual Insurance Company is now and was at all times herein mentioned a mutual insurance company organized and existing by virtue of the laws of the State of Massachusetts, and authorized by the United States Employees' Compensation Commission to provide compensation insurance protecting employees under the Longshoremen's and Harbor [1*] Workers

*Page numbering appearing at foot of page of original certified Transcript of Record.

Compensation Act, hereinafter referred to as the "Act" and the insurance carrier provided by libelant Contractors Pacific Naval Air Bases, an association, in accordance with the provisions of the Act.

II.

That the libelant Contractors Pacific Naval Air Bases is now and was at all times herein mentioned an association of contracting firms engaged in building and erecting military and naval installations for the United States, particularly in the islands of the Pacific Ocean.

III.

That the respondent Warren H. Pillsbury is now and was at all times mentioned herein, the Deputy Commissioner of the 13th Compensation District under the provisions of the Act.

IV.

That the respondent Charles F. Keil, Jr. at the time of occurrence of the accident hereinafter mentioned was under a contract of employment with libelant Contractors Pacific Naval Air Bases to proceed from Denver, Colorado, to the Hawaiian Islands to render service at a military base of the United States on the Island of Oahu, Territory of Hawaii, and was transiently residing in the City of Oakland, County of Alameda, State of California, while awaiting transportation by ship to said Island of Oahu.

V.

That on or about the 5th day of August, 1942, respondent Charles F. Keil, Jr., filed a claim before the United States Employees' Compensation Commission for benefits under the Longshoremen's and Harbor Workers' Compensation Act, as amended under the Act of Congress of August 16, 1941, contending that on Sunday evening, May 24, 1942, at or near the corner of Seventh and Franklin Streets, Oakland, California, he was struck by an [2] automobile, sustaining a fracture of the left leg. Said claim was numbered "Case No. BA-89, Claim No. DB22."

VI.

That the cause was primarily within the jurisdiction of the Deputy Commissioner for the Pacific District with headquarters at Honolulu, Territory of Hawaii, but, with the approval of the Employees' Compensation Commission, and as permitted by law, was transferred to the 13th Compensation District, Warren H. Pillsbury, Deputy Commissioner.

VII.

That on August 11, 1942, this matter was heard before respondent Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at the offices of the Commission, 417 Market Street, San Francisco, California. That at said hearing respondent Charles F. Keil, Jr. claimed that compensation was due him because of injuries sustained in an automobile accident on May 24, 1942, at Oakland, California, as aforesaid

while said respondent was under contract with libelant Contractors Pacific Naval Air Bases to proceed to the Hawaiian Islands for service there. Libelants contended that respondent Keil was not in the course of his employment at the time of the accident; that said accident did not arise from the employment; that he had not arrived at the point of employment and that the accident occurred in the evening at a time when no services were being rendered to the employer. That a copy of a transcript of the testimony taken at said hearing of August 11, 1942, is appended hereto marked "Libelants' Exhibit No. 1."

VIII.

That at said hearing of August 11, 1942, the following facts were agreed to by the respective parties (Transcript, Libelants' Exhibit No. 1, pages 3 and 4.):

"1. That on or about May 24, 1942, claimant [3] was under an existing contract of employment with defendant Contractor Pacific Naval Air Bases, and that at said time said employer had secured the payment of compensation under said Military Bases Act by insurance in defendant Liberty Mutual Insurance Company.

"2. That the contract was for the performance of service at an air, military or naval base of the United States outside the Continental United States, and the claim is within the provisions of said Military Bases Act and the jurisdiction of the appropriate Deputy Commissioner.

"3. That claimant met with accidental injury on May 24, 1942, the injury being due to his being hit by an automobile at Seventh and Franklin Streets, Oakland, California, and causing a fracture of the left leg.

"4. No claim is made of intoxication contributing to said injury, or of wilfully self-inflicted injury.

"5. That medical treatment has not been furnished by defendants. Claimant has received care to date at the Alameda County Hospital. If the injury is found to be compensable and if the Alameda County Hospital makes a charge for such treatment, award may be entered in favor of claimant against defendants for the payment of the reasonable medical expenses incurred.

"6. Notice of injury within 30 days admitted.

"7. That the earnings provided for by said contract of employment may be taken for the purpose of this proceeding at $40.00 a week plus board and room of the reasonable value of $10.50 a week, subject to the provisions concerning the maximum compensation rate contained in said Act.

"8. That no compensation has been paid.

"9. That claimant has been totally disabled from labor from the time of his accident to the present time, and will be totally disabled from labor as a result thereof for a period of time in the future not here determined.

"The only ISSUE is whether such injury occurred in the course of and arose out of claimant's employment."

IX.

That at the said hearing of August 11, 1942, counsel for [4] defendants (the libelants herein) introduced in evidence the aforementioned contract of employment between said Charles F. Keil, Jr. and the employer, Contractors Pacific Naval Air Bases, the material paragraphs of which appear in the Transcript (Libelants' Exhibit No. 1), pages 12 and 13.

X.

That at said hearing of August 11, 1942, the only witness to testify was respondent Keil, whose testimony appears in the Transcript of said hearing (Libelants' Exhibit No. 1) at pages 5 to 11. Respondent Keil testified that his home was in Denver, Colorado, where he was hired; his transportation by bus was furnished by the employer and he left Denver on May 12, 1942, arriving at Oakland two days later. At Oakland, his contract of employment was re-executed in fuller form, and respondent prepared to sail for Hawaii on May 21st, but, accommodations apparently being limited, only three members of respondent's crew were taken and respondent was told to return to his hotel to await the sailing of another steamer. (Transcript, pp. 5-8.) As to the accident in which he was injured, respondent Keil testified that on the evening of May 24, 1942, (which was a Sunday) at about 8:30 P. M. he was out walking with a Mr. Olson. The two had had supper about 6 P. M. and then went for a stroll, which eventually took them to the neighborhood of Seventh and

Franklin Streets, Oakland, where respondent was hit and injured by an automobile. Respondent and his companion were returning to their hotel at the time of the accident. Respondent testified that he and his companion were walking for pleasure and were not on an expedition to any particular place. Respondent was paying for his board out of his salary while living in Oakland and until he should embark for Hawaii.

XI.

That thereafter and on September 10, 1942, the said Deputy [5] Commissioner Warren H. Pillsbury made his Compensation Order and Award of Compensation, finding, among other things, that "on the evening of May 24th, after dinner, and while strolling about the City of Oakland, and not on any diversion from his route to his place of employment under said contract, he was struck by an automobile on a public street, sustaining a fracture of the left leg. That under the circumstances stated above, said injury occurred in the course of and arose out of his employment." The Award is as follows:

> "That the employer, Contractors Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to claimant compensation as follows: The sum of $282.14 forthwith as of August 11, 1942, and the further sum to claimant of $25.00 a week thereafter, payable in installments each two weeks until the termination of his dis-

ability or the further order of the Deputy Commissioner."

A copy of said Compensation Order-Award of Compensation is appended hereto marked "Libelants' Exhibit No. 2."

XII.

That said Compensation Order and Award of Compensation are not in accordance with law or with the provisions of the Longshoremen's and Harbor Workers' Act in this, that there was not at any time herein mentioned, or at any other time, any substantial evidence before said Deputy Commissioner to the effect that claimant Charles F. Keil, Jr. (respondent herein) suffered accidental injuries while in the course of his employment. Nor is there any evidence whatever to the effect that said accidental injuries arose, naturally or otherwise, from said employment within the meaning of the Act. To the contrary, respondent's own testimony, being the sole evidence as to the accident, proves that respondent was injured on a Sunday night while strolling about the City of Oakland for his own pleasure and not on any business or errand for the employer.

XIII.

That libelants herein refer to the accompanying Memorandum [6] of Points and Authorities as stating additional facts and reasons for the issuance of the injunction herein requested.

XIV.

That Liberty Mutual Insurance Company is joined as a libelant herein because the Longshoremen's and Harbor Workers' Compensation Act provides for the substitution of the insurance carrier for the employer.

XV.

That all the notices and the duly transcribed original notes of testimony taken at the hearing, and the original Compensation Order and Award of Compensation of Deputy Commissioner Warren H. Pillsbury are in the custody of said respondent and it is necessary for this Court to have possession of the record of said hearing and of all the relevant papers now in the possession of said Deputy Commissioner in order to determine whether or not the Compensation Order and Award of Compensation of said Deputy Commissioner is in accord with law.

XVI.

That libelants will be irreparably damaged if a mandatory injunction annulling and vacating said award is not granted them by this Court.

XVII.

That libelants have not the right to appeal from the aforesaid Compensation Order and Award of Compensation, and have no plain, speedy or adequate remedy available other than the redress requested by libelants in the form and manner specified in the Act.

Wherefore, basing their bill of complaint and petition on said Longshoremen's and Harbor Workers' Compensation Act, approved March 4, 1927, as amended, and upon the Act of Congress approved August 16, 1941, to provide compensation for disability or death resulting from injury to persons employed at military, [7] air, and naval bases acquired by the United States from foreign countries, and on lands occupied by the United States for military or naval purposes outside the continental limits of the United States, with certain exceptions, libelants herein respectfully pray:

(1) That Deputy Commissioner be ordered to deliver to this Court, or the Clerk thereof, a certified transcript of any claim he has for compensation made in this matter, all notices, transcribed notes of testimony, exhibits, the Compensation Order and Award of Compensation aforesaid, and all other papers, records or matters relating to this cause or the hearing thereof.

(2) That a time and place be set so that said matters and record may be fully heard and considered by this Court.

(3) That said Compensation Order and Award of Compensation made by said Deputy Commissioner against libelants herein be annulled, reversed, vacated and set aside by mandatory injunction or otherwise as provided in the Act.

(4) That libelants be granted such other and further relief as may be meet and proper in the premises.

Dated San Francisco, California, October 9, 1942.

THEODORE HALE
CHARLES B. MORRIS
CARROLL B. CRAWFORD
Attorneys for Libelants. [8]

State of California
City and County of San Francisco—ss.

F. O. White, being first duly sworn, deposes and says that he is the Resident Claims Manager of Liberty Mutual Insurance Company, one of the libelants herein, and as such Resident Claims Manager is authorized to verify the foregoing Bill of Complaint for Mandatory Injunction; that he has read the said Bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to these matters that he believes it to be true.

F. O. WHITE

Subscribed and sworn to before me this 9th day of October, 1942.

E. J. CASEY
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed] Filed Oct 10 1942. [9]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF BILL OF COMPLAINT FOR MANDATORY INJUNCTION

STATEMENT OF FACTS

At Denver, Colorado, on or shortly before May 12, 1942, Charles Keil, Jr., claimant before Deputy Commissioner Pillsbury and respondent here, signed a preliminary contract of employment with libelant Contractors Pacific Naval Air Bases for service on a military or naval base in the Hawaiian Islands. He left Denver by stage at his employer's expense as to fare only on May 12, 1942, and arrived in Oakland, California, on May 14, [10] 1942, where he signed a final contract.

Respondent Keil had expected to leave by ship for the Hawaiian Islands on May 21st, but only three of his party were taken aboard. Respondent returned to his hotel in Oakland to await the sailing of the next ship. During this time he was under pay from his employer but was not to receive his board until he embarked for the Islands.

On Sunday, May 24th, at about 8:30 in the evening, while returning to his hotel after a stroll about Oakland with a companion, respondent Keil was struck by an automobile at Seventh and Franklin Streets and suffered a broken leg. He filed a claim for compensation with the Deputy Commissioner under the Longshoremen's and

Harbor Workers' Act, and after a hearing which disclosed the aforementioned facts, the Deputy Commissioner made an award in the employee's favor as set forth in libelants' bill of complaint and the exhibits thereto.

The sole issues herein are (1) whether or not, within the meaning of the Act, said injuries were suffered while the employee was in the scope of his employment, and (2) whether they arose from said employment so as to entitle the employee to workman's compensation under the Act.

It will be noted that the Deputy Commissioner has found that respondent Keil, when injured, was "not on any diversion from his route to his place of employment under said contract."

SCOPE AND CHARACTER OF THE ACT

The Longshoremen's and Harbor Workers' Compensation Act follows generally the compensation acts of the several states, though its scope is, of course, more limited. Until August 16, 1941, when Congress enacted a bill extending the Act to certain workers on naval and military bases outside the Continental United States, the Act applied only to longshoremen, [11] stevedores and other land workers injured on vessels lying in or plying the navigable waters of the United States. One exception to the above statement is found in the District of Columbia where the Act's scope has been widened by act of Congress.

One section of the Act which particularly concerns the case at bar is as follows:

"The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment."

Longshoremen's and Harbor Workers' Compensation Act, Sec. 1, subd. 2, (33 U. S. C. A. Sec. 902.)

As to the duty and authority of the Deputy Commissioner and reviewing court it has been said:

"The findings of a Deputy Commissioner must be sufficient under the law to support the award."

Ocean S. S. Co. v. Lawson, 68 Fed. 2d 55.

"If the Deputy Commissioner ignores proper evidence presented, it is an error of law; if prejudice results, his order is not in accordance with law and the Court will give relief."

Grant v. Marshall, 56 Fed. 2d 654. [12]

SPECIFICATIONS OF ERROR IN THE AWARD

1. Inasmuch as the employee was a mechanic (steamfitter, fireman and boiler maintenance man) the Deputy Commissioner erred in finding that said employee was injured in the course of his

employment, when, as a matter of fact, he was injured while on business or pleasure of his own after dinner on a Sunday night while he was strolling about the City of Oakland on no business or errand for the employer. This would be true whether the employee were traveling for his employer or not. (Torrey v. Ind. Acc. Com. 132 Cal. App. 303, 22 Pac. (2d) 525.)

2. The Deputy Commissioner erred in finding that the employee's injury arose out of his employment when, as a matter of fact, said employee was a mechanic, off duty, not on business for his employer, strolling about the City of Oakland for his own pleasure, and the injury was caused when the employee was struck by an automobile.

3. The Deputy Commissioner erred in finding that the employee suffered an industrial injury at all. This is true because of the facts mentioned in Paragraphs 1 and 2 above, and because of the further fact that the employment (even had he been working at his trade) did not result in exposing the employee to greater risk or danger from reckless automobile drivers traversing the streets than that incurred by all pedestrians, the "people of the neighborhood" or the "commonalty", as various judicial opinions have expressed the matter.

LAW APPLICABLE TO THE FACTS OF INSTANT CASE

It will be observed that the Deputy Commissioner's award disregards well settled principles

of compensation law for the determination of scope of employment, and thus makes the employer in effect the insurer of the well being and safety of the employee, no matter how or where he be injured, as long as the employee refrains from intoxication and willful injury [13] of himself. (Mobile and O. R. Co. v. Ind. Comm. 28 Fed. (2d) 228.) The nature of these rules is most exhaustively and yet concisely set forth in the opinion in Mobile and O. R. Co. v. Ind. Comm., supra, a quotation from which follows:

"Compensation acts in general substitute a new cause of action, a new proceeding, for common law rights and liabilities in cases of injuries to employees. The intention was to secure workmen and dependants against becoming objects of charity by making a reasonable compensation for all such accidental calamities as are incidental to the employment. Under such acts injuries to employees are to be considered no longer as results of fault or negligence, but as the products of the industry in which the employee is concerned. Compensation for such injuries is, under the theory of such statutes, like any other item in the cost of production or transportation, and ultimately charged to the consumer. (See 28 R. C. L. p. 714.) * * * The law substitutes for liability for negligence an entirely new conception; that is, if the injury arises out of and in the course of the employment, under the doctrine of man's humanity to man, the cost must be one of the elements to be liquidated and balanced in money in the course of consump-

tion. In other words, the theory of the law is that, if the industry produces an injury, the cost of that injury shall be included in the cost of the product of the industry. Hence the provision that the injury must arise out of and in the course of the employment. [14]

The theory of the act calls logically for a liberal construction of its provisions, but there are reasonable limitations, and the operation of the law should not be stretched by any extraordinary principle to the extent of making the employer the insurer of the safety and well being of the employee. There must be, arising from the employment in the industry, some fact, some act, some occurrence, that produces the injury. The act is not to be considered as a substitute for disability or old age compensation.

The words themselves, "arising out of the employment," would seem to be clear, yet they have been provocative of much discussion in various courts. The Massachusetts Court's discussion (McNicol's Case, 215 Mass. 497, 102 N. E. 697, L. R. A. 1916 A, 306), of the principle involved is as enlightening as one may find. The court there says that the injury, in order to warrant the payment of compensation, 'must both arise' out of and also be received in the course of the employment. Neither alone is enough. * * * An injury is received "in the course of" the employment when it comes while the workman is doing the duty which he is employed to perform. It "arises out of" the employment, when there is a

* * * causal connection between the conditions under which the work is required to be performed and the resulting injury. * * * If the injury can be seen to have * * * been [15] contemplated by a reasonable person familiar with the whole situation, * * * then it arises "out of" the employment. * * * The causative danger must be peculiar to the work and not common to the neighborhood. * * * It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.'

Mobile and O. R. Co. v. Ind. Comm. 28 Fed. (2d) 228, supra.

POINTS DISTINGUISHING THIS CASE FROM OTHERS SOMEWHAT SIMILAR

It is not, of course, contended by anyone in the instant case that respondent Keil was injured while actually working at his trade, while riding on a stage or train in transit from Denver to Oakland, while riding from a stage or train to his hotel, while in a street car or other conveyance en route to or from the docks from which he was to sail. Such circumstances, if they existed, would make a different case.

When injured the employee was completely master of his own time, course and movements. He was exposed to no greater danger or risk because of his employment than was any other

pedestrian near Seventh and Franklin Streets at the time of the accident.

The only manner in which the employee's injury can be connected with his employment is by statement of the obvious fact that if Charles F. Keil, Jr. had not been employed by Contractors Pacific Naval Air Bases for service in Hawaii, he would not have left Denver and consequently would not have been at Seventh and Franklin Streets, Oakland, at the time of the accident. This circumstance or condition alone, however, [16] does not create legal liability:

> In answer to the suggestion that the employee would not have been injured if he had not been at the place of employment, it has been said that in the same causative sense, if he had not come into being he could not have been injured, and that the same argument might be made for a claim against one who sold a carriage to one who was struck by lightning while riding in it."
>
> Mobile & O. R. Co. v. Industrial Commission, 28 Fed. (2d) 228, 231.

To the same effect:

> Storm v. Ind. Acc. Com., 191 Cal. 4, 6, 7, 214 Pac. 874.

In addition to the authorities heretofore cited, the following are a few in point herein:

> Torrey v. Ind. Acc. Com., 191 Cal. 303. (Traveling Inspector drowned while taking boat ride for his own pleasure.)

Morgan v. Hoage, 72 Fed. (2d) 727. As to what is "course of employment".

Gompert v. London Acc. Guar. Co., 100 Fed. (2d) 352. Mechanic employed by mail chute company injured by automobile in street while returning to his hotel after dinner for purpose of installing mail chute.

And for many more pertinent cases and detailed discussion of the questions involved herein see:

Mobile and O. R. Co. v. Ind. Com. 28 Fed. (2d) 228, quoted in part, supra).

Campbell on Workmen's Compensation, Vol. 1, pp. 103-113. [17]

Inasmuch as it does not apepar from the evidence herein that respondent Keil's injuries were suffered while he was acting within the scope of his employment, or that said injuries arose from the employment, or that they were industrial injuries at all within the meaning of the law, it is respectfully submitted that the award should be annulled.

Dated, San Francisco, October 9, 1942.

THEODORE HALE
CHARLES B. MORRIS
CARROLL B. CRAWFORD
Attorneys for Respondents.

[Endorsed] Filed Oct 10 1942. [18]

[Title of District Court and Cause.]

EXCEPTIONS OF RESPONDENT WARREN H. PILLSBURY TO LIBEL IN PERSONAM TO ENJOIN COMPENSATION ORDER

Now comes Respondent Warren H. Pillsbury and, treating the pleading filed herein entitled "Bill of Complaint for Mandatory Injunction" as a libel in personam to enjoin Respondent's Compensation Order, files his exceptions to said libel, and for grounds thereof, alleges:

I.

That the libel on file herein be dismissed for want of allegations showing that libelants are entitled to the relief prayed for. [19]

II.

That the libel on file herein be dismissed in that

(1) It does not appear from the face of said libel in what manner the Findings of Fact heretofore made by Respondent Pillsbury on September 10, 1941, are not supported by substantial evidence;

(2) It does not appear from the face of said libel in what manner the Compensation Award made by Respondent Pillsbury on September 10, 1941, is not supported by substantial evidence;

(3) It does not appear from the face of said libel in what manner the Compensation Award made by Respondent Pillsbury on September 10, 1941, is contrary to law.

Wherefore, Respondent Pillsbury prays that his

exceptions to said libel be granted and that said libel be dismissed and for such other relief that he may be entitled to receive in the premises.

FRANK J. HENNESSY,
United States Attorney.

(Admission of Service.) [20]

[Title of District Court and Cause.]

MEMORANDUM OF AUTHORITIES IN SUPPORT OF EXCEPTIONS

The Findings of Fact and Order directing libelants to pay certain money for workmen's compensation of Respondent Charles Keil, as made by respondent Warren H. Pillsbury in the above entitled matter are final and conclusive and not subject to judicial review if supported by substantial evidence.

Pac. Employers Insurance Co. v. Pillsbury;
(CCA-9) 61 F. (2) 101

[Endorsed]: Filed Jan. 4, 1943. [21]

[Title of District Court and Cause.]

OPENING MEMORANDUM OF POINTS AND AUTHORITIES ON SUBMISSION OF CAUSE FOLLOWING LIBEL FOR MANDATORY INJUNCTION

STATEMENT OF FACTS

* * * * * * *

VI.

THE DEPUTY COMMISSIONER WAS WITHOUT JURISDICTION OF THE SUBJECT MATTER HEREIN

Libelants contend that for two reasons the Deputy Commissioner was without jurisdiction to make the findings and award herein:

1. As previously set forth herein, the injury was not compensable because it did not arise out of or in the course of the employment. Only injuries so arising are compensable under the Act. (Sec. 2, subd. 2.) The award was therefore in excess of the Deputy Commissioner's powers. [22]

2. Neither the Longshoremen's and Harbor Workers' Compensation Act nor the Act of August 16, 1941 (Public Law 208, 77th Congress, Chapter 357) amendatory thereof, purport to give the United States Employees' Compensation Commission jurisdiction to award compensation to an employee hired under a contract of employment executed in California, for injuries arising from an accident occurring on the public streets of the City of Oakland or elsewhere within the borders of the State of

California, the navigable waters of the United States and dry docks within the state excepted. The Longshoremen's Act, by its own terms in Sec. 3 (a) expressly denies the Commission such jurisdiction:

> "Sec. 3 (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by state law. * *" (Emphasis ours.)

Obviously the streets of Oakland are not navigable waters of the United States, nor are they a dry dock. The Deputy Commissioner found that at the time of the injury "claimant resided at a hotel in Oakland, adjacent to said office of the employer at Alameda, awaiting transportation." (Libelant's Exhibit No. 2, page 24.) Under such circumstances as to residence of employer and employee the workmen's compensation laws of the State of California apply. (Constitution of California, Article XX, Sec. 21; Labor Code of California, Secs. 3201 to 6002, inclusive, and particularly Secs. 3351, 3600 and 3601.) [23]

As to the Act of August 16, 1941, its operation is specifically limited to employees at military, air and naval bases acquired by the United States from foreign countries, lands occupied or used by the United States for military or naval purposes out-

side the continental limits of the United States, including Alaska, Guantanamo, and the Philippine Islands, but excluding the Canal Zone.

The title and first paragraph of the Act of August 16, 1941, read:

"(Public Law 208—77th Congress)
(Chapter 357—1st Session)
(S 1642)

AN ACT

To provide compensation for disability or death resulting from injury to persons employed at military, air, and naval bases acquired by the United States from foreign countries, and on lands occupied or used by the United States for military or naval purposes outside the continental limits of the United States, including Alaska, Guantanamo, and the Philippine Islands, but excluding the Canal Zone, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That except as herein modified, the provisions of the Act entitled 'Longshoremen's and Harbor Workers' Compensation Act', approved March 4, 1927 (44 Stat. 1424), as amended, and as the same may be amended hereafter, shall apply in respect to the injury or death of any employee engaged in any employment at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government

or any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States, including, Alaska, Guantanamo, and the Philippine Islands, [24] but excluding the Canal Zone, irrespective of the place where the injury or death occurs."

From the foregoing it will clearly be seen that the Act of August 16, 1941 (Public Law 208—77th Congress) applies only to the Territories and other lands over which the Federal Government has exclusive jurisdiction and control and in which no state government has ever been established. In other words, the sovereign states of the Union are excepted from its operation, as indeed they must be in order to save its constitutionality. In this connection it should be remembered that when he was injured Mr. Keil had not passed outside the continental limits of the United States and had never worked at a naval or military base.

It thus appearing that the Compensation Order and Award of Compensation is contrary to the evidence and contrary to law, it is respectfully submitted that it should be reversed and annulled.

Dated, February 4, 1943.

THEODORE HALE,
CHARLES B. MORRIS,
CARROLL B. CRAWFORD,
Attorneys for Libelants.

Receipt of the foregoing Opening Memorandum of Points and Authorities on Submission of Cause

Following Libel for Mandatory Injunction is hereby admitted this 4th day of February, 1943.

FRANK J. HENNESSY,
Per T. S.
Attorney for Respondents.

[Endorsed]: Filed Feb. 4, 1943. [25]

[Title of District Court and Cause.]

SUPPLEMENTAL MEMORANDUM OF RESPONDENT WARREN H. PILLSBURY, DEPUTY COMMISSIONER

The libelant raises for the first time in its briefs the question of the jurisdiction of the Deputy Commissioner of the United States Employee's Compensation Commission to hear and determine the instant case.

While this point should have been raised in the libel we assume that the question of jurisdiction may be raised at any time and, therefore, we take this opportunity to answer the contention briefly.

The provisions of the Longshoremen's and Harbor Workers Compensation Act (Title 33 USC 901 et seq) were [26] extended by an Act of Congress dated August 16, 1941 to employees engaged in employment at military bases outside the continental United States. (Title 42 USC 1651 et seq.)

It is the contention of the respondent Deputy Commissioner that under said Section it is not necessary in order to acquire jurisdiction that the

injury occur outside of the continental United States.

It is sufficient that the person injured be an employee engaged to work at a military post outside of the United States; that the phrase "employee engaged in any employment at" defines the contractual status of the claimant in the sense that he has entered into a contract to work at a military post as defined in the statute.

We adopt this position because of the clause in the statute which states that compensation shall be payable "irrespective of the place where the death or injury occurred." From this we conclude that it is the clear intendment of the statute to protect the employee while traveling to and from his place of employment where we may assume that a greater part of the risks involved will be encountered.

To assume libelant's interpretation of the statute would make the phrase "irrespective of the place where the injury or death occurs" meaningless and we are bound to interpret a statute, wherever possible, so that it is intelligible.

For the reasons stated we respectfully submit that the Deputy Commissioner in the instant case had jurisdiction to make the award. Whether or not his award for an injury occurring during the "waiting period" before the employee [27] left for

his place of employment is fully considered in the briefs on file.

Respectfully submitted,
FRANK J. HENNESSY,
United States Attorney.
Attorney for Respondent
Warren H. Pillsbury.

[Endorsed]: Filed Mar. 29, 1943. [28]

[Title of District Court and Cause.]

ORDER SETTING ASIDE AWARD AND FOR ISSUANCE OF INJUNCTION

Ordered:

1. The Compensation Order, Award of Compensation, Case No. BA-89, Claim No. DB/22, made by Warren H. Pillsbury, Deputy Commissioner, 13th Compensation District, on the 10th day of September, 1942, is set aside:

2. Injunction will be issued as prayed for.

Attorneys for libellants may submit formal order accordingly.

Dated: March 30, 1943.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Mar. 30, 1943. [29]

In the Southern Division of the United States District Court for the Northern District of California

No. 23725-S

LIBERTY MUTUAL INSURANCE COMPANY, a mutual insurance company, and CONTRACTORS PACIFIC NAVAL AIR BASES, an association,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th District, and CHARLES F. KEIL, JR.,

Respondents.

ORDER AND DECREE

This cause came on regularly for hearing on the 25th day of January, 1943, on libelants' bill of complaint for mandatory injunction and exceptions to same of respondent Warren H. Pillsbury as Deputy Commissioner of the United States Employees' Compensation for the Thirteenth Compensation District, whereupon the matter was argued by the counsel for libelants and the respondent Deputy Commissioner and was by the Court ordered submitted after the filing of briefs; said briefs having been filed and considered by the Court, and the Court being fully advised herein, and having on the 30th day of March, 1943, made and filed its order setting

[30] aside award and for issuance of mandatory injunction;

It Is Hereby Ordered, Adjudged and Decreed that the Compensation Order, Award of Compensation, in favor of Charles F. Keil, Jr., Case No. BA-89, Claim No. DB/22, made and filed by the said respondent Warren H. Pillsbury as Deputy Commissioner of the United States Employees' Compensation Commission, Thirteenth Compensation District, on the 10th day of September, 1942, should be and it is hereby annulled, vacated and set aside;

It Is Hereby Further Ordered, Adjudged and Decreed that the said Warren H. Pillsbury, as said Deputy Commissioner, and the said Charles F. Keil, Jr., be and they are hereby perpetually enjoined and restrained from taking any further action or proceedings having for their purpose or object the prosecution or enforcement of said cause designated in the files of the United States Employees' Compensation Commission as Case No. BA-89, Claim No. DB/22.

Dated at San Francisco, California, this 15th day of April, 1943.

A. F. ST. SURE,
District Judge.

Receipt of copy of the within Order and Decree is hereby acknowledged this 5th day of April, 1943.

FRANK J. HENNESSY,
Attorney for Respondent
Deputy Commissioner.

[Endorsed]: Filed Apr. 15, 1943. [31]

United States Employees' Compensation Commission

13th Compensation District

In the matter of the claim for compensation under the Act of Congress of August 16, 1941, extending the Longshoremen's and Harbor Workers' Compensation Act to employments on certain military, air, or naval bases of the United States.

CHARLES F. KEIL, JR.,

Claimant,

Against

CONTRACTORS, PACIFIC NAVAL AIR BASES,

Employer.

LIBERTY MUTUAL INSURANCE CO.,

Insurance Carrier.

COMPENSATION ORDER AWARD OF COMPENSATION CASE No. BA-89—CLAIM No. DB 22

Claim for compensation having been filed herein under the Act of Congress of August 16, 1941 for injury occurring in the course of an employment on an air, military or naval base of the United States outside the continental United States, in the Pacific Compensation District, and said claim having been transferred to the undersigned Deputy Commissioner, Thirteenth Compensation District, by the Deputy Commissioner of said Pacific District

at Honolulu, in the Territory of Hawaii, with the approval of the United States Employees' Compensation Commission, and such investigation in respect to the above entitled claim having been made as is considered necessary and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT

That on the 24th day of May, 1942, the claimant above named was in the employ of the employer for service to be performed at a construction job on an air, military or naval base of the United States on Islands in the Pacific Ocean and in the Pacific Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act as extended by said Act of Congress of August 16, 1941, and that the liability of the employer for [32] compensation under said Acts was insured by Liberty Mutual Insurance Company;

That the said employee was hired for such work at Denver, Colorado, and provided his transportation by the employer to San Francisco Bay. He was directed to report to the employer's office at Alameda, California, on May 14th, at which time his contract for employment was re-executed in fuller form, but to the same effect, his salary commenced the same day. That his contract of employment provided that transportation by ship should thereafter be provided him by the employer to the Pacific Island to which he would be sent for work, but transportation by vessel was not ready for him

on that day. It was contemplated that he would leave San Francisco on the next ship about May 21st, but at that time only three men were taken from the group then awaiting transportation, not including claimant. Accommodations were finally available for the remainder of said men, including claimant, about two weeks later. In the meantime claimant resided at a hotel in Oakland, California, adjacent to said office of the employer at Alameda, awaiting transportation. On the evening of May 24th, after dinner, and while strolling about the City of Oakland, and not on any diversion from his route to his place of employment under said contract, he was struck by an automobile on a public street, sustaining a fracture of the left leg. That under the circumstances stated above, said injury occurred in the course of and arose out of his employment.

That notice of injury was given within thirty days after the date of such injury, to the Deputy Commissioner and to the employer;

That defendants have not provided medical, surgical or hospital treatment. That such treatment was provided at the County Hospital of the County of Alameda, State of California. That claimant is entitled to have paid to him or on his behalf such reasonable charge for such service as may be made against him by said Alameda County Hospital; [33]

That the average annual earnings of the claimant herein at the time of his injury exceeded the maximum provided by said Acts of $1950.00, his actual

wages being $40.00 a week, together with an allowance of $10.50 a week for room and board;

That as a result of the injury sustained the claimant was wholly disabled from the date thereof indefinitely. That he is entitled to 11-2/7 weeks compensations, $25.00 a week, for such disability, to the date of the hearing, August 11, 1942, amounting to $282.14, and thereafter at said rate until the termination of the disability or the further order of the Deputy Commissioner.

Upon the foregoing facts the Deputy Commissioner makes the following:

AWARD

That the employer, Contractors, Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, shall pay to claimant compensation as follows: The sum of $282.14 forthwith as of August 11, 1942, and the further sum to claimant of $25.00 a week thereafter, payable in installments each two weeks until the termination of his disability or the further order of the Deputy Commissioner.

Given under my hand at San Francisco, California, this 10th day of September, 1942.

(S) WARREN H. PILLSBURY,
Deputy Commissioner, 13th Compensation District.

WHP-EB:ca.

[Endorsed]: Filed Sept. 10, 1942. [34]

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Compensation Order-Aware of Compensation, was sent by registered mail to the claimant, to the employer, and to the insurance carrier at the last known address of each as follows:

Mr. Charles Keil, Jr., c/o Hotel Royal, 20th and San Pablo, Oakland, California.

Contractors, Pacific Naval Air Bases, Drawer F, Alameda, California.

Liberty Mutual Insurance Company, 703 Market Street, San Francisco, Calif.

By regular mail to:

Mr. C. B. Morris, Attorney, 220 Bush Street, San Francisco, Calif.

Mr. Andrew F. Schmitz, Deputy Commissioner, 407 Hawaiian Trust Bldg., Honolulu, T. H.

Mr. E. V. Parker, United States Employees' Compensation Commission, 285 Madison Avenue, New York, New York.

WARREN H. PILLSBURY,
Deputy Commissioner.

Mailed 9-10-42
CA

[Endorsed]: Filed Jun. 19, 1943. [35]

Form 48

CONTRACT OF EMPLOYMENT

Req. No. 1057 Ex A
Project Barber's Pt.

Contractors, Pacific Naval Air Bases - - Contracts NOy-3550 and NOy-4173 the "Employer", employs the "Employee" hereinafter named upon the following terms and conditions, to which the Employer and the Employee agree:

1. Name of Employee: Charles Frederick Keil, Jr.

2. The position for which the Employee represents he is qualified and for which he is engaged is that of Steamfittter's Helper on a construction job on Pacific Islands. It is understood that although the Employee is engaged for the above mentioned class of work, he may be used, at the option of the Employer, in any other class of work, without any reduction in pay.

3. The period of service shall be such period as the Employer may desire the services of the Employee, it being understood that the Employee may be transferred from one job and location to another if desired by the Employer, but the Employer will not require the Employee to remain on the Pacific Islands more than twelve months without his consent. The Employee agrees to work for the Employer in accordance with the terms of this contract until the termination of the period of service. In the event that the Employee shall refuse or fail to

work for the Employer as herein provided, or shall otherwise fail or be unable fully to perform this contract for whatever reason, including actions or orders of military or civil authorities or of the enemy, the Employer shall be excused from any performance on its part while such default of the Employee shall continue, and may at its option terminate this contract.

4. Salary or wages shall be No Dollar(s) and eighty (80) cents per hour, based on a 44-hour week basis with the guaranteed opportunity to work 48 hours per week, or No Dollar(s) and eighty-five (85) cents per hour, based on a 48-hour week basis, plus board and lodging or, in lieu thereof, $10.50 per week at the Contractors' option only, and shall be the whole salary and compensation applicable for the entire period of service.

5. The Employee agrees to work a minimum of 48 hours per week. Any work in excess of 8 hours per day or in excess of the stipulated work week will be paid for at the rate of one and one-half times the base rate. Saturday and Sunday, as such, shall not be considered as an overtime day.

6. Salary to commence on May 14, 1942, and cease on return to original Port of Embarkation or prior termination of contract, except as provided in Paragraphs 8 and 9. (Salary is not payable for travel time to Port of Embarkation, or for any period prior to date stated

above, or for any period after return to Port of Embarkation. The Employer reserves the right to withhold all or any portion of the salary covering traveling time from Port of Embarkation for a period of sixty days after the Employee arrives at Honolulu.)

7. Transportation from San Francisco to Honolulu, T. H., and, upon satisfactory completion of contract, return to Port of Embarkation, and all incidental preliminary expenses, such as medical examination, vaccinations and photographs will be paid by the Employer. (Transportation cost to Port of Embarkation will be paid only if authorized in writing in advance. No transportation will be paid after return to Port of Embarkation.)

8. It is understood that the Employee will arrange and pay his return transportation cost and expenses if he quits, or if he is discharged in accordance with Paragraph 9. In either case, salary shall cease as of the date of quitting or discharge.

9. If the services of the Employee are not satisfactory to the Employer, or if he is not, or does not show himself, qualified for the position for which he is hired, or is negligent in his duties, or displays bad temper, or in the case of the immoderate use, in the opinion of the Employer, of alcoholic drinks, or the contraction or development of venereal disease, the Employee may be discharged without any further

obligation resting upon the Employer. It is understood that the Employee may be dismissed if requested by any Government Official. Immediately upon such discharge or dismissal, the employment shall terminate and salary shall cease; and the Employee will arrange and pay his own return transportation cost and expense.

10. The Employee, before departure, is to submit to the required physical examination, furnish in duplicate certificates of the examining physician (a satisfactory medical certificate being a condition of this employment), and submit to and furnish certification of the required vaccination.

11. The Employee understands that other men from his trade, or other trades or crafts, may be employed on the work to be done in the Pacific Islands, and that these men may be either union or non-union. The Employee agrees that the employment of such men will not be used as a reason for failure to carry out this contract.

12. Compensation insurance will be paid in accordance with the Defense Base extension of the Longshoremen's and Harbor Workers' Compensation Act.

13. While traveling on vessels on pay status, employees may be required to perform those services necessary for their own upkeep aboard such vessel, including serving food at mealtimes,

maintaining the proper condition of cleanliness in quarters, and other necessary duties brought on by the presence of civilians on such vessels.

14. The Employee understands that the Territory of Hawaii is under the supervision of military authorities acting pursuant to martial law and/or the supervision of civil authorities acting pursuant to emergency and extraordinary powers. The Employee agrees that any act by the Employer inconsistent with the provisions hereof and any omission by the Employer to perform any of its obligations hereunder shall be excused if such act or omission shall result from the compliance by the Employer with any order or regulation of the said military or civil authorities, and the period of employment shall not be extended as a result of the interruption of the performance hereof by reason of such order or regulation.

15. The Employee agrees that no promises whatso ever other than those stated in this contract have been made.

In the event of accident or emergency the Employer may notify:
Mr. Chas. R. Keil, Relationship Father, at 3548 Columbine (Street or R.F.D. Number), Denver (City), Colorado (State).

The foregoing address may be considered as the Employee's permanent address or the address of the person in whose care the Employer may communicate concerning this contract or other

matters if it is unable to communicate with the Employee personally.

Nearest of Kin same as above.

Executed at Alameda, California, in quintuplicate, this day of May 14, 1942.

Signed and acknowledged in presence of:

(sgd) G. R. HUGHS,
As to the Employer.

(sgd) G. R. HUGHS,
As to the Employee.

CONTRACTORS PACIFIC NAVAL AIR BASES, CONTRACTS NOy-3550 and NOy-4173.

By (sgd) W. H. WALTHALL,
Employer.

(sgd) CHARLES FREDERICK KEIL, JR.,
Employee.

[Endorsed]: Filed Jun. 19, 1943. [36]

[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY AT HEARING

Pursuant to notice, this matter was heard before Warren H. Pillsbury, Deputy Commissioner, United States Employees' Compensation Commission, at the offices of the Commission, at Four Seventeen Market Street, San Francisco, California, on Tuesday the 11th day of August, 1942, at 2:00 P. M.

Appearances:

Claimant present in person.

Defendant represented by C. B. Morris, Attorney, and C. L. Brash of the Alameda Base of Contractors PNAB.

Anita Smith, (Substituting for Mildred McColgan,) Reporter.

Mr. Pillsbury: Hearing on claim for compensation. The claim, supplemented by claimant's statement, alleges that the injury, though occurring at Oakland, California, was in employment in reference to service to be rendered at a military base of the United States on the Island of Oahu, Territory of Hawaii. The case is primarily within the jurisdiction of Deputy Commissioner Andrew F. Schmitz, Pacific District, Honolulu. It, however, has been transferred by Deputy Commissioner Schmitz to me for hearing and decision in the 13th Compensation District, with the approval of the Employees' Compensation Commission, because of claimant's residence in this district, and apparently because of witnesses being in this district also.

The claim originates under Act of Congress of August 16, 1941, extending the provisions of the Federal Longshoremen's and Harbor Workers' Compensation Act to employments on air, military and naval bases of the United [37] States outside the Continental United States.

The claim indicates that compensation is contended to be due because of an automobile acci-

dent at Oakland, California, sustained while claimant was under contract with defendants to proceed to the Hawaiian Islands for service as above.

Mr. Morris, what are defendants' contentions?

Mr. Morris: Our contentions are that he was not in the course of his employment; that he had not arrived at the point of employment and that the accident occurred in the evening, at a time when there were no services being rendered to the employer.

The Following Facts Are Agreed to by the Parties:

1. That on and about May 24, 1942 claimant was under an existing contract of employment with defendant Contractor Pacific Naval Air Bases, and that at said time said employer had secured the payment of compensation under said Military Bases Act by insurance in defendant Liberty Mutual Insurance Company.

2. That the contract was for the performance of service at an air, military or naval base of the United States outside the Continental United States, and the claim is within the provisions of said Military Bases Act and the jurisdiction of the appropriate Deputy Commissioner.

3. That claimant met with accidental injury on May 24, 1942, the injury being due to his being hit by an automobile at Seventh and Franklin Streets, Oakland, California, and causing a fracture of the left leg.

4. No claim is made of intoxication contributing to said injury, or of wilfully self-inflicted injury.

5. That medical treatment has not been furnished

by defendants. Claimant has received care to date at the Alameda County Hospital. If the injury is found to be compensable and if the Alameda County Hospital makes a charge [38] for such treatment, award may be entered in favor of claimant against defendants for the payment of the reasonable medical expenses incurred.

6. Notice of injury within 30 days admitted.

7. That the earnings provided for by said contract of employment may be taken for the purpose of this proceeding at $40.00 a week plus board and room of the reasonable value of $10.50 a week, subject to the provisions concerning the maximum compensation rate contained in said Act.

8. That no compensation has been paid.

9. That claimant has been totally disabled from from labor from the time of his accident to the present time, and will be totally disabled from labor as a result thereof for a period of time in the future not here determined.

The only Issue is whether such injury occurred in the course of and arose out of claimant's employment.

Are you satisfied this is a correct copy of your contract, Mr. Keil?

Mr. Keil: Yes.

Mr. Pillsbury: Mr. Morris offers copy of contract of employment, dated May 14, 1942, which claimant stipulates to be correct, ond it is received in evidence as Exhibit "A".

CHARLES KEIL, JR.,

the claimant, being first duly sworn, testified as follows:

Mr. Pillsbury: Q. Your name is Charles Keil, Jr.? A. Yes, sir.

Q. Your present address is Hotel Royal, Oakland, California? A. Yes, sir.

Q. Where is your home, Mr. Keil?

A. Denver, Colorado.

Q. And what is the address?

A. 3548 Columbine Avenue. [39]

Q. Are you planning to return to Denver as soon as you can?

A. Well, not necessarily, no. It depends on how the outcome of things are. If I am able to secure employment here, I may do that.

Q. So far as this case is concerned, there would be no reason until I tell you to the contrary at the close of the hearing, for your staying here for the purpose of the case after today.

Now, according to this printed contract, Exhibit "A", the contract of employment was signed May 14, 1942, at Alameda, California. That is correct, is it? A. Yes, sir.

Q. Was there any earlier or preliminary contract?

A. Not what I would call a contract, other than papers we signed at Denver, Colorado, previous to that, which would—whether you would call it a preliminary contract or not I couldn't say,—had the necessary papers, birth certificate and the like.

(Testimony of Charles Keil, Jr.)

Q. Did you sign any definite agreement to work for the Pacific Naval Air Bases while you were in Colorado?

A. Yes, there is a paper there.

Q. Now, this contract, Exhibit "A", provides that your salary was to commence on May 14, 1942?

A. Yes, sir.

Q. And did it commence on May 14th?

A. Yes.

Q. You were under salary at the time of your accident? A. Yes, sir.

Q. Now, why weren't you on your way to Honolulu by May 24th?

A. Due to—one boat sailed on a Thursday previous to that. [40]

Q. Previous to the 14th?

A. No. Previous to the accident of the 24th, which would make it about the 21st the boat sailed. We were called for sailing that day, and only three of the crew I was with was taken, who were underground workers. The rest of us were delayed to a later sailing.

Q. Were you originally to have sailed on or about the 14th of May?

A. That was the opinion we had at the time, but only three were taken.

Q. That was on the 14th?

A. No. That was the 21st.

Q. I am speaking now of the date your contract was signed.

A. Our agreement when we came out here was

(Testimony of Charles Keil, Jr.)

we should figure on a possible week layover, and the notice we had after signing the contract was to report at the Naval Air Base on a Thursday, which would be the 21st of May.

Q. How did you happen to be out here on the 14th of May?

A. Our bus left—they furnished our transportation from Denver, and the bus left on the 12th of May, which brought us in here on the 14th.

Q. Was that transportation provided for you by the Pacific Naval Air Base? A. Yes, sir.

Q. Then the employer arranged it for you to be here on the 14th of May? A. Yes, sir.

Q. At the time your contract was signed?

A. That's right.

Q. And did they have a boat ready for you to sail on at that time? A. Not at that time, no.

[41]

Q. You anticipated that they would have transportation by water ready for you on May 21st?

A. That was—we were called out to have our luggage all checked and be out there on the 21st, at which time the underground workers were taken, and only three of our crew was taken, leaving the rest of us.

Q. So the company did not have a boat ready for you on the 21st? A. No, sir.

Q. What were you told about further sailing?

A. We were just told to return to our hotels and wait until further notice of sailing.

(Testimony of Charles Keil, Jr.)

Q. And had you received any notice by the 24th of May?

A. Not to any definite time of sailing, no.

Q. And do you know when the other members of your crew with whom you were waiting, were actually shipped?

A. They finally left two weeks—to my recollection, two weeks after I had my accident.

Q. You had not missed any boat, or failed to appear up to the 24th at any time you were directed to appear for sailing? A. No, sir.

Q. Now, how did you get hurt, Mr. Keil?

A. Well, crossing the street at Seventh and Franklin Streets, going across the cross-walk, I took notice of the traffic coming, both right and left. There was cars coming from the left at a considerable distance away, which I had plenty of time to cross before them, and after getting to the middle of the street, I turned to the right, at which time a car apparently come from around on the other side, on the left-hand side of the road, and struck me on the left-hand side of the road. [42]

Q. At what time was this?

A. It happened about 8:30 in the evening.

Q. What were you doing at Seventh and Franklin Streets at that time?

A. Just out walking—we had been. Another fellow by the name of Mr. Olson and I had taken a walk. We had been to Lake Merritt from the Hotel and then back up town and walking around just killing time, more or less. We had had sup-

(Testimony of Charles Keil, Jr.)

per about 6 o'clock and been out walking since then.

Mr. Pillsbury: Mr. Morris, any questions?

Mr. Morris: Q. Mr. Olson—is he down—has he sailed? A. Yes, he has sailed.

Q. Where did you have your supper that night?

A. At the Acme Grille, on San Pablo.

Q. That's over on the other side of town from where you were hurt?

A. Yes. It is about, I should judge—about 16th and San Pablo—about 15th or 16th and San Pablo.

Q. You had your dinner there and then you took a walk? A. Yes, sir.

Mr. Pillsbury: Q. Were you looking for anything in the region of 7th and Franklin?

A. No. Everybody has asked me that, but not knowing the town—we weren't acquainted and naturally liable to wind up most any point in town in the course of walking.

Q. That is, you were not on any particular expedition to any particular place at the time?

A. No, sir.

Mr. Morris: Q. Were you going back towards your hotel, or away from the hotel?

A. No. We were coming toward the hotel at the time the accident happened. [43]

Q. You had been down along the water front?

A. Yes. We just looked across the street toward what they call the fishermen's dock there. We did not cross the street there, just turned around and

(Testimony of Charles Keil, Jr.)

started back toward the hotel. There didn't look to be anything of interest.

Q. This car came from in back of some other cars, you didn't see it?

A. I never saw it at all, never saw the car. Mr. Olson was on my left, had the advantage over me. He saw it and jumped in time to avoid his only being clipped on the heel, which didn't hurt him at all.

Q. You were paying for your own meals and hotel? A. Yes.

Q. Paying that out of your salary?

A. Yes, sir.

Mr. Pillsbury: Q. That is, your subsistence did not start until you reached the Islands?

A. Until we boarded the boat.

Mr. Morris: That is all.

Mr. Pillsbury: Hearing closed.

I hereby certify that the foregoing is a correct transcript of the testimony and proceedings taken in the above matter at the hearing held on August 11, 1942.

.....

Reporter.
(Substituting for Mildred McColgan)

[Endorsed]: Filed Jun 19 1943. [44]

U. S. Naval Communication Service

SRS

Copy

NPM 495 ER6th
ZPNI RDO Honolulu CK 25 Govt COMP Sixth 2047
Govt Comp Pillsbury Deputy Commissioner Comp 417 Market Street San Francisco
Reurad Charles Keil Have Wired Commission Recommending Transfer to You No Information Available Honolulu:—

SCHMITZ

2233

LD 3193

[Endorsed]: Filed Jun 19 1943. [45]

U. S. Naval Communication Service

SRS

NSS NR 2087 SA 7 AUG Copy
ZPNi RDO New York 29 Govt Compen 7 1616
Govt Compen Pillsbury Compen Sanfran
Claim Henry Burt Transferred to You for Hearing and Decision Also Claim Charles Keil Jr Schmitz Wires No Information Available Honolulu For Keil

Compen

1802 03658

LD.....

[Endorsed]: Filed Jun 19 1943. [46]

(Copy)

Leave This Space Blank
Case No. BA
Insurance
Carrier's No.

United States Employees' Compensation Commission

Office of Deputy Commissioner Warren H. Pillsbury

Administering Longshoremen's and Harbor Workers' Compensation Act
Employee's Claim for Compensation

(To be filed with the Deputy Commissioner in accordance with sections 13 and 19 of the law)

Injured Person

1. Name of employee—Charles Keil, Jr. Employee's check No.....
2. Address: Street and No.—Hotel Royal, City or town—Oakland, California
3. Sex—Male Age—30 Married, s i n g l e, widowed—single
4. Do you speak English? — Yes Nationality—American
5. State regular occupation — Steam Fitter's Helper
6. What were you doing when injured?— " "

Mo

7. (a) Wages or average earnings perxxy, $165. & Subsistence (Including overtime, board, rent, and other allowances.) (b) Per week, $..... (c) Were you employed elsewhere during week in which you were injured?..... (d) If so, state where and when.....

8. Were you paid full wages for day of accident?

Employer

9. Employer—Contractors, Pacific Naval Bases

10. Office address: Street and No..... City or town—Alameda, Calif.

11. Nature of business

The Injury

12. Place where injury occurred—Seventh and Franklin Streets, Oakland, Calif. (Give place and name of vessel)

13. Name of foreman

14. Date of accident or first illness, the 24th day of May, 1942, at.....o'clock.....M.

15. How did accident happen or how was occupational disease caused?—After signing of preliminary employment contracto at Denver, Colo., and final contract at Alameda, Californ sailing was postponed to later boat. Struck by auto Sunday evening, May 24th, while down town.

Nature and Extent of Injury

16. State fully nature of injury or occupational disease:—Fracture of left leg

17. On what date did you stop work because of injury?, 192.....

18. Have you returned to work? (Yes or No.) No
If "yes," on what date?....., 192.....

19. Does injury keep you from work? (Yes or No.) Yes

20. Have you done any work in period of disability?—No

21. Have you received any wages since injury?....
If so, from and to what date?

22. Has injury resulted in amputation?
If so, describe same

23. Did you request your employer to provide medical attendance?.....Has he done so?.....

24. Attending physician: Name.....
Address

25. Hospital: Name—Highland Hospital
Address—Oakland, Calif.

Notice

26. Have you given your employer notice of injury? (Yes or No.)—Yes When?....., 192....

27. If such notice was given, to whom?.....

28. Was it given orally or in writing?.....

I hereby present my claim to the Deputy Com-

missioner for compensation for disability resulting from an injury arising out of and in the course of my employment and not occasioned solely by intoxication, or by my willful intention, and in support of it I make the foregoing statement of facts.

Signed by

(S) CHARLES F. KEIL, JR.

Claimant

Mail address

Hotel, Royal, Oakland, Calif.

Dated August 5, 1942, 192

[Endorsed]: Filed Jun 19 1943. [47]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this libel to review an order and award of compensation made by Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, under the Longshoremen's and Harbor Workers Compensation Act of 1927, as amended (33 U. S. C. 901 et seq.) and the act of Congress of August 16, 1941 (42 U. S. C. 1651 et seq.) extending the Longshoremen's and Harbor Workers' Act to certain workers on naval and military bases outside the continental United States, the court finds:

1. That this court has jurisdiction to review the said award under the terms of the aforementioned acts.

2. That about May 12, 1942, at Denver, Colorado, the respondent Charles F. Keil, Jr., signed a preliminary contract of employment with Contractors Pacific Naval Air Bases on a military or naval base project in the Hawaiian Islands; that he arrived in Oakland, California, on May 14, 1942, where he signed a final contract of employment, which was the only contract put in evidence at the hearing before the Deputy Commissioner.

3. That the respondent Charles F. Keil, Jr. had expected to sail by ship for the Hawaiian Islands on May 21, 1942, but only three of his party were taken aboard; respondent Keil returned to his hotel in Oakland to await the sailing of the next ship; during this waiting period he was under pay from his employer, but was not to receive his board until he embarked for the Hawaiian Islands.

4. That, on Sunday, May 24, 1942, at about 8:30 in the [48] evening, while returning to his hotel after a stroll about the City of Oakland, State of California, with a companion, respondent Keil was struck by an automobile at Seventh and Franklin streets in said city and suffered a broken leg.

5. That thereafter, and within the time allowed by law, respondent Keil filed a claim for comensation under the aforesaid acts with respondent Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission; that said claim was numbered No. BA-89, Claim No. DB/22 in the files of said commission.

6. That, on the 11th day of August, 1942, the said matter was heard before the said Deputy Com-

missioner at this office in San Francisco; the material issues at such hearing were (1)) whether claimant's said injuries were suffered while he was in the scope of his employment, and (2) whether said injuries arose from said employment so as to entitle the employee to Workmen's Compensation under the said Longshoremen's and Harbor Workers' Compensation Act as amended by said act of Congress of August 16, 1941, and (3) whether said Deputy Commissioner had jurisdiction to consider the matter and make an award therein; libelants contended that said injuries were suffered when claimant was without the scope of his employment, that they did not arise from said employment and that the Deputy Commissioner was without jurisdiction to make any award whatsoever in said matter.

7. That thereafter, on the 10th day of September, 1942, the said Deputy Commissioner made his compensation order and award of compensation, finding among other things, that "on the evening of May 24, 1942, after dinner, and while strolling about the City of Oakland, and not on any diversion from his route to his place of employment under said contract, he was struck by an automobile on a public street, sustaining a fracture of the left leg. That under the circumstances stated above, said injury occurred in the course of and [49] arose out of his employment." The award of compensation directed that the employer, Contractors Pacific Naval Air Bases, and the insurance carrier, Liberty Mutual Insurance Company, pay to respon-

dent Charles F. Keil, Jr. compensation as follows:

The sum of $282.14 forwith, as of August 11, 1942, and the further sum to claimant of $25 a week thereafter, payable in installments each two weeks, until the termination of his disability or the further order of the Deputy Commissioner.

8. That said Compensation Order and award of Compensation are not in accordance with law or with the provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended, or with the Act of Congress of August 16, 1941, extending the provisions of the said Longshoremen's and Harbor Workers' Compensation Act to employees engaged in employment at military and naval bases outside the continental United States, in this:

There was not before said Deputy Commissioner any evidence proving or tending to prove that the said accidental injuries to respondent Charles F. Keil, Jr. were suffered (1) while said respondent was in the course of his employment, or (2)) that said accidental injuries arose from his employment, or (3) while said Charles F. Keil, Jr. was employed as a worker (other than a member of the crew) on a vessel lying in or plying the navigable waters of the United States (including any dry dock), nor while said respondent was employed at any military, air or naval base acquired by the United States from a foreign country or on land occupied or used by the United States for military or naval purposes outside the continental limits of the United States.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the Court finds:

I.

That this court has jurisdiction under the Longshoremen's [50] and Harbor Workers' Compensation Act of 1927 as amended (33 U. S. C. 901 et seq.) and the Act of Congress of August 16, 1941 (42 U. S. C. 1561 et seq.) to entertain this libel and petition for mandatory injunction permanently restraining enforcement of the said act.

II.

That the said injuries suffered by the said Charles F. Keil, Jr. on the 24th day of May, 1942, were suffered while the said Charles F. Keil, Jr. was not within the scope of his employment; that the said injuries did not arise from the said Charles F. Keil, Jr.'s employment, and the said Deputy Compensation Commissioner in making the aforesaid award acted entirely without and beyond his jurisdiction and that, therefore, said award should be annulled, vacated and set aside, and the said Warren H. Pillsbury, as Deputy Commissioner of the United States Employees' Compensation Commission and the said respondent Charles F. Keil, Jr. should be perpetually enjoined and restrained from taking any further proceedings having for their purpose or object the prosecution or enforcement of said cause.

Let judgment be entered accordingly.

Dated at San Francisco this 12th day of July, 1943, and made nunc pro tunc as of April 14, 1943, which is a date prior to that on which the judgment herein was signed and entered. These Findings of Fact and Conclusions of Law are made at respondents' request for the sole purpose of informing respondents of the court's reasons for annulling the aforesaid order and award of compensation and directing the issuance of a mandatory injunction, in order that said respondents may appeal from the judgment herein if they be so advised.

A. F. ST. SURE,
District Judge. [51]

The foregoing Findings and Conclusions are hereby approved by the respective parties hereto, who further stipulate that they may be signed *be* the court, and when and if so signed shall constitute the Findings of Fact and Conclusions of Law in the above-entitled cause.

Dated: July 6, 1943.

THEODORE HALE,
CHARLES B. MORRIS,
CARROLL B. CRAWFORD,
Attorneys for Libelants.
FRANK J. HENNESSY,
Attorney for Respondent Warren H. Pillsbury, Deputy Commissioner.

[Endorsed]: Filed Jul 22, 1943. [52]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Judge of the District Court of the United States for the Northern District of California.

Warren H. Pillsbury, as Deputy Commissioner for the 13th Compensation District under the Longshoremen's and Harbor Workers Compensation Act, one of the Respondents in the above entitled matter and appellant herein, feeling agrieved by the Order and Decree made and entered in the above entitled cause on the 30th day of March, 1943, wherein and whereby the Libel of mandatory injunction was sustained, does hereby appeal from said Order and Decree to the United States Circuit Court of Appeals for the Ninth Circuit [53] for the reasons set forth in the Assignment of Errors filed herewith.

Wherefore petitioner prays that his Petition be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents and all of the papers upon which said Order and Decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such Court and in accordance with the law in such cases made and provided.

Dated: This 23rd day of June, 1943.

FRANK J. HENNESSY,
United States Attorney.

Receipt of a copy of the above Petition for Appeal is hereby acknowledged this day of June, 1943.

....,
Proctor for Libelants.

[Endorsed]: Filed Jun 24, 1943. [54]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

On motion of Frank J. Hennessy, United States Attorney for the Northern District of California, attorney for respondent Warren H. Pillsbury and appellant in the above entitled cause;

It Is Hereby Ordered that the appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an Order and Decree heretofore made in the above entitled case, be and the same is hereby allowed, and that a certified transcript of the records, testimony, exhibits, Stipulations and all proceedings be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit in the manner and time prescribed by law.

Dated: This 24 day of June, 1943.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Jun 24, 1943. [55]

[Title of District Court and Cause.]

CITATION AND ADMISSION OF SERVICE

The United States of America to the Libelants Liberty Mutual Insurance Company, a Mutual Insurance Company and Contractors Pacific Naval Air Bases, an Association: Greeting:

You Are Hereby Cited and Admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the Post Office Building in the City and County of San Francisco, State of California, within forty (40) days from date hereof pursuant to a Petition for Appeal in the Clerk's Office of the District Court of the [56] United States for the Northern District of California, Southern Division; wherein Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th District, and Charles F. Keil, Jr. are the respondents-appellants, and Liberty Mutual Insurance Company, a mutual insurance company, and Contractors Pacific Naval Air Bases, an association, are the libelants-appellees, to show cause if any there may be why the Order and Decree in said Petition for Appeal mentioned should not be corrected and speedy justice should not be taken in that behalf.

Given under my hand in the City and County of San Francisco in the District and Circuit aforesaid this 24 day of June, 1943.

A. F. ST. SURE,
United States District Judge.

Receipt of a copy of the within Citation and Admission of Service is hereby acknowledged this day of June, 1943.

....., Proctor for Libelants-Appellees.

[Endorsed]: Filed Jun 24, 1943. [57]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Now comes Warren H. Pillsbury, Deputy Commissioner for the 13th Compensation District under the Longshoremen's and Harbor Workers Compensation Act, one of the respondents in the above entitled cause, by his proctor, and in connection with his Petition for Appeal, assigns the following errors in the Order and Decree of this Court entered March 30, 1943:

I.

That the United States District Court for the Northern District of California erred in making and entering [58] the Order and Decree dated March 30, 1943, sustaining the Libel herein and issuing the mandatory injunction in said Libel;

II.

That the said Court erred in refusing to sustain the Rsepondent Warren H. Pillsbury's Exceptions to the Libel herein, and in refusing to confirm the compensation order and award made by Warren H.

Pillsbury, Deputy Commissioner, filed on September 10, 1942;

III.

That the said Court erred in refusing to enter an order and decree herein declaring that the said compensation order of the Respondent Warren H. Pillsbury was in accordance with law and supported by evidence;

IV.

That said Court erred in refusing to support the findings of Respondent Warren H. Pillsbury, Deputy Commissioner, for the 13th Compensation District under the Longshoremen's and Harbor Workers Act that Charles F. Keil, Jr. was injured in the course of and within the scope of his employment;

V.

That the Court erred in finding that the Respondent Warren H. Pillsbury as said Deputy Commissioner was without [59] jurisdiction to make findings and award of compensation under the Longshoremen's and Harbor Workers Compensation Act.

FRANK J. HENNESSY
United States Attorney
Proctor for Respondents-
Appellant

Receipt of a copy of the within Assignment of Errors is hereby acknowledged this day of June, 1943.

.....
Proctor for Libelants-Appellees

[Endorsed]: Filed Jun 24 1943. [60]

[Title of District Court and Cause.]

DESIGNATION OF APOSTLES ON APPEAL

To The Clerk of The Above Entitled Court:

You will please make up, certify and file a transcript of the record in the above entitled cause upon the appeal thereof to the Circuit Court of Appeals for the Ninth Circuit, and incorporate therein the following:

Libel (entitled Bill of Complaint for Mandatory Injunction,) including a Memorandum of Points and Authorities in support thereof and attached thereto;

Exceptions of Respondent Warren H. Pillsbury to the Libel in personam to enjoin compensation order and Memorandum of Points and Authorities attached thereto; [61]

Supplemental Memorandum of Points and Authorities of Respondent Warren H. Pillsbury in support of Exceptions to Libel in personam;

Transcript of testimony taken before Respondent Warren H. Pillsbury and any exceptions annexed thereto and in particular:

Compensation Order and Award of Compensation filed September 10, 1942;

Copy of contract of employment between Contractors Pacific Naval Air Bases and Charles F. Keil, Jr. dated May 14, 1942;

Copy of transcript of testimony before Respondent Warren H. Pillsbury, Deputy Commissioner dated August 11, 1942;

Copy of telegram dated August 6, 1942 from Deputy Commissioner Schmitz to Commission;

Copy of telegram dated August 7, 1942 from Commission to Respondent Warren H. Pillsbury;

Copy of employee's claim for compensation.

Order setting aside award and for issuance of injunction dated March 30, 1943;

Order and Decree;

Findings of Fact and Conclusions of Law;

The following papers filed on or about June, 1943:

Petition for Allowance of Appeal;

Order Allowing Appeal;

Citation and Admission of Service and Certificate of Service;

Assignment of Errors;

Designation of Apostles on Appeal;

Clerk's Certificate to Transcript of record.

Dated: This 23rd day of June, 1943.

FRANK J. HENNESSY
United States Attorney
Proctor for Respondents-Appellants.

(Admission of Service.)

[Endorsed]: Filed July 15 1943. [62]

[Title of District Court and Cause.]

CONTRA-DESIGNATION OF APOSTLES ON APPEAL

To the Clerk of the Above Entitled Court:

In addition to the papers enumerated by respondents-appellants in their Designation of Apostles on Appeal on file herein, you will please include in the record on appeal:

(a) That portion of "Opening Memorandum of Points and Authorities on Submission of Cause Following Libel for Mandatory Injunction", filed in this Court on February 4, 1943, which begins on page 12, line 7, with the Roman Numeral "VI", and thence to the bottom of page 12, and all of pages 13, 14 and 15 thereof.

(b) This Contra-Designation of Apostles on [63] Appeal.

Dated: July 23, 1943.

THEODORE HALE
CHARLES B. MORRIS
CARROLL B. CRAWFORD
Proctors for Libellants-Appellees.

Receipt of copy of the within Contra-Designation of Apostles on Appeal is hereby acknowledged this 23rd day of July, 1943.

FRANK J. HENNESSY
Proctor for Respondents-Appellants.

[Endorsed]: Filed Jul 14 1943 [64]

District Court of the United States,
Northern District of California

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 64, inclusive, contain a full, true and correct transcript of the records and proceedings in the case of Mutual Liberty Insurance Co., et al., Libelants, vs. Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission, et al, No. 23725-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of apostles on appeal is the sum of $14.70 and that said sum has been charged against the United States.

In Witness Whereof, I have hereunto set my hand and seal of said District Court at San Francisco, California, this 28th day of July, 1943.

C. W. CALBREATH, Clerk
By E. H. NORMAN,
Deputy Clerk [65]

[Endorsed]: No. 10507. United States Circuit Court of Appeals for the Ninth Circuit. Warren H. Pillsbury, as Deputy Commissioner for the 13th Compensation District under the Longshoremen's and Harbor Workers Compensation Act, Appellant, vs. Liberty Mutual Insurance Company, a Mutual Insurance Company, and Contractors Pacific Naval Air Bases, an Association, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 28, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States of America

No. 10507

LIBERTY MUTUAL INSURANCE COMPANY, a mutual insurance company, and CONTRACTORS PACIFIC NAVAL AIR BASES, an association,

Libelants,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th District, and CHARLES F. KEIL, JR.,

Respondents.

STATEMENT OF POINTS ON APPEAL AND DESIGNATION OF APOSTLES ON APPEAL.

To the Clerk of the above entitled Court:

Appellant Warren H. Pillsbury hereby adopts and makes a part hereof as if incorporated herein as his statement of points on appeal those specifications, designations and objections presented and stated in his Assignment of Errors on file herein, copy of which has been heretofore served on proctor for libelants.

The appellant Warren H. Pillsbury relies on the entire transcript of record as certified and filed in this court in support of his Points on Appeal.

Dated: This 2nd day of September, 1943.

FRANK J. HENNESSY
United States Attorney
Proctor for Appellants.

[Endorsed]: Filed Sep 3 1943. Paul P. O'Brien, Clerk.